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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Note verbale dated 19 June 2001 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Permanent Mission of the Republic of Iraq to the United Nations Office in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and has the honour to transmit, attached, a note on the system of Smart Sanctions,* submitted by the Republic of Iraq to the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-third session.

The Permanent Mission of the Republic of Iraq would be grateful if the United Nations High Commissioner for Human Rights would take the necessary measures to distribute this note as a document of the fifty-third session of the Sub-Commission under the item of the provisional agenda entitled: "Economic, social and cultural rights".

* The annex is reproduced as received, in Arabic and English only.

Annex

Note concerning the sanctions regime imposed on Iraq and the so-called "smart sanctions", submitted by the Government of the Republic of Iraq to the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-third session under item 4 of the provisional agenda entitled "Economic, social and cultural rights"

In the light of Sub-Commission on Human Rights resolution 2000/25 entitled "Adverse consequences of economic sanctions" in which it decides to continue its examination of sanctions regimes at its fifty-third session under item 4 of the provisional agenda entitled "Economic, social and cultural rights", the Government of the Republic of Iraq would like to point out that the economic sanctions regime imposed on Iraq was based on Security Council resolution 661 (1990) and on two other resolutions, namely 665 (1990) and 670 (1990). The sanctions against Iraq are the most comprehensive in the history of the United Nations, particularly since they are in fact intended to isolate Iraq and its 23 million people from the outside world.

It is now clear that the war of aggression waged against Iraq in 1991 was targeted at the Iraqi infrastructure in order to compound the economic destruction and psychological ruin of the Iraqi people and push Iraq back into the pre-industrial age, as expressly stated by the former United States Secretary of State, James Baker, in 1990.

Following the end of the war in February 1991, the Iraqi people faced a terrible crisis of survival owing to the destruction of power plants, water purification facilities, food depots, sewage treatment plants, oil wells, hospitals and other targets.

The effects of the economic embargo extended to include all aspects of life and delayed progress and the process of cultural revival in Iraq. Today, the Iraqi people are facing destruction and genocide by a weapon that is no less dangerous than weapons of mass destruction, namely that of the economic embargo.

The current situation in Iraq demonstrates that malnutrition and the spread of disease are firmly linked to mortality among the under-fives. An increase in the diseases of malnutrition has been widely noted and such diseases are one of the serious problems from which the children in Iraq suffer. Statistics also show that the incidence of malnutrition has increased sharply, having risen from 18.7 per cent in 1991 to 26.7 per cent in 1998.

Statistical information further indicates that infant and child mortality rates have been similarly affected; since imposition of the embargo in 1990, a total of 622,887 children under the age of five have so far died as a result of diarrhoea, pulmonary and respiratory diseases and malnutrition. Among the over-fives and the elderly, a further 897,530 people have died from cardiac disease, hypertension, diabetes and malignant tumours.

In the field of education, the total enrolment rate in child nurseries in Iraq fell from 8.2 per cent in 1991 to 3.7 per cent in 2000, and although primary education has been

compulsory in Iraq since 1978, a proportion of children between the ages of 6 and 11 remain outside the system, parents being forced by the need to earn sufficient income to postpone the day when their children start school.

The 1998 report of the Minister of Education shows that, during the period 1990-1998, approximately 22.6 per cent of children were not enrolled in school. In 2000, 82.5 per cent of males were enrolled in primary schools, compared with 69 per cent of females. Overall enrolment among children of primary school age fell from 92.3 per cent in 1990 to 86.3 per cent in 2000.

The oil-for-food programme

It might initially appear to some that the Security Council has not disregarded the negative impact of the continuing embargo against Iraq, in which connection they refer to the establishment of the humanitarian programme adopted pursuant to Security Council resolution 986 (1995). At least that is the position of United States and United Kingdom officials.

In this regard, it should be stated that the United Nations oil-for-food programme has been prevented from attaining its humanitarian objectives for a variety of reasons, including the complexity of the measures adopted by the Security Council for implementation of the Memorandum of Understanding and interference by the United States of America and the United Kingdom in its implementation. Unfairness has also been seen in the distribution of revenues from the sale of Iraqi oil, added to which have been the persistence of the United States of America and the United Kingdom in placing contracts on hold on imaginary pretexts, the bureaucracy in the way that contracts are submitted, an accumulation of the monies allocated for United Nations operational and administrative costs, the removal of vast sums for the reparations fund and inadequate financial management, as revealed in the report of the Secretary-General on the Office of Internal Oversight Services (A/55/436) in the section entitled "Office of the Iraq Programme".

In scores of letters addressed to the Secretary-General of the United Nations and in contacts with the United Nations Humanitarian Coordinator in Iraq and the Office of the Iraq Programme in New York, the Government of Iraq has endeavoured to reveal the facts which it has discovered in its experience with the so-called humanitarian programme, which it expected to put an end to the deterioration in the living conditions of inhabitants under the unjust embargo. No serious moves, however, have so far been made to remedy these discrepancies.

The shortcomings which have been diagnosed cannot possibly create an effective system that would satisfy the humanitarian needs of the Iraqi people. In this connection, we should like to recall the opinion firmly expressed by the second of the panels established by the Security Council under the chairmanship of Ambassador Celso Amorim to examine the humanitarian situation in Iraq in 1999, which, in paragraph 58, Annex II of document S/1999/356, stated that "the humanitarian situation in Iraq will continue to be a dire one in the absence of a sustained revival of the Iraqi economy, which in turn cannot be achieved solely through remedial humanitarian efforts". This clearly means that the cure is the lifting of the embargo.

Security Council resolution 1284 (1999) and the draft resolution on so-called "smart sanctions"

Following the end of the activities of the panels chaired by Ambassador Amorim and the debate on their reports, the United Kingdom, with clear United States support, made strong efforts to submit a new resolution, a process which took several months. As a result, Security Council resolution 1284 (1999) was adopted on 17 December 1999 and on 19 December 1999, Iraq declared that it would not deal with that resolution because it did not respond to Iraq's legitimate call for the lifting of the embargo and it made no mention whatsoever of the aggression against Iraq and the daily breach of its sovereignty by the imposition of the aerial exclusion zones by the United States of America and the United Kingdom. Iraq stated at the time that the objectives of the United States of America and the United Kingdom in the resolution was to mislead international public opinion, because the concept of "suspension" contained in the resolution was new - a concept that required a long and complicated series of new and unclear conditions that could have been interpreted in so many ways that the resolution had no guarantee that the suspension would in fact take place. Furthermore, the time scales mentioned in the resolution were artificially long and were laid down to suit the domestic situation in the United States of America in an election year. They also showed the intention of the United States of America and the United Kingdom to perpetuate the illegal aerial exclusion zones over northern and southern Iraq, as well as the acts of military aggression against Iraq, the illegitimate United States intervention in Iraq's internal affairs and its overt attempts to change the national political system in Iraq. Iraq further made it clear that, in both substance and form, the resolution was an illegal redrafting of Security Council resolution 687 (1991). Iraq also made clear that the stringent and vague conditions surrounding the new and illusory concept of "suspension" were fresh conditions that were not stipulated in previous resolutions. They were placed there in order to ensure that any suspension, if ever it were to take place, would have no substance or benefit for Iraq and would also constitute an arbitrary restriction of Iraq's sovereignty over its economy and resources.

Although the situation remained unchanged, the international campaign to lift the sanctions on Iraq and to end the crime of genocide being perpetrated against the people of Iraq continued and escalated. With the coming to power of the new United States Administration at the beginning of this year, United States officials began to state that the embargo imposed on Iraq was "faltering" and resembled "Swiss cheese". They also stated that one of the major concerns of the new Administration was to "revitalize" the sanctions against Iraq. This concept of revitalization began to take form shortly thereafter, when the United States of America and the United Kingdom submitted a draft resolution to the Security Council on the so-called "smart sanctions", which were claimed to be a lessening of sanctions on people and a strengthening of sanctions on the Iraqi Government. We should not forget that the new United States Administration opened its file on dealing with Iraq with an act of aggression on the night of 16 February 2001.

Reasons for rejection of the draft resolution on so-called "smart sanctions"

The Government of Iraq rejected the draft resolution on so-called "smart sanctions", the reasons for which can be summarized as follows:

1. The draft resolution replaces the current system for the approval of humanitarian food contracts that is based essentially on allowing all civilian items to enter Iraq, excluding the dual-use items annexed to Security Council resolution 1051 (1996), which are items with civilian uses that can also be used to build weapons of mass destruction. Contracts for such items are not approved until Iraq agrees to the plan for ongoing monitoring and verification (suspended since 16 December 1998). Iraq submitted no contracts for the import of items in this category during the last nine phases. The proposed new system increases the list of dual-use goods to include all military items and the dual-use items contained in the Wassenaar Arrangement Dual-Use and Munitions List, which are unrelated to weapons of mass destruction, as well as other civilian items, including:

- Training, cargo and civil aircraft, aircraft engines, aircraft spare parts and aircraft components;
- Airborne navigation equipment and airborne radar equipment;
- Explosive detection systems, including those used in airports;
- Communications equipment, including civilian items such as optical fibre cables for use in public telephone exchanges, wireless equipment and digital processing equipment;
- Information security and encryption equipment;
- Mining and drilling equipment;
- Oil well pipes;
- Laboratory equipment;
- Magnetic recorders;
- Trailers and loaders with a carrying capacity greater than 30 metric tonnes;
- Computer hardware and software.

There is insufficient scope here to cite many examples of the nature of the items which, under the resolution, are regarded as dual-use items. By examining the lists, however, it can be said that performance and activity in the sectors of industry, agriculture, higher education, scientific research, transport, communications and petroleum would be very adversely affected and could cease altogether with the passage of time.

The new regime authorizes the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) to review any contract which is submitted and determine whether it relates to dual-use items. If so, it forwards the contract to the Security Council Committee established by resolution 661 (1990) for a decision in that connection. Under the new regime, the list of prohibited items is therefore expanded and UNMOVIC plays the role previously

performed by the Committee established under resolution 661 (1990) of reviewing civilian contracts. The United States of America thus absolves itself from responsibility for placing contracts on hold on the pretext of dual use by shifting that responsibility onto UNMOVIC. The regime also creates a new mechanism for monitoring the supply of (conventional) military equipment to Iraq, whereas under Security Council resolutions 687 (1990) and 700 (1991) it is States which are responsible for preventing the export of arms and related materiel to Iraq. The quarterly reports of the Secretary-General on the implementation of this embargo do not indicate that any violations have occurred since it was first imposed in 1991.

2. All forms of commercial transaction between Iraq and its neighbours are subject to a regime, monitored by the United Nations, under which Iraq is not permitted to obtain any hard currency. The two proposals for this regime represent a choice between a trade-off whereby Iraq exports oil against which it imports nothing other than humanitarian items and a process whereby Iraq exports oil and places the funds in an escrow account in neighbouring States from which it then purchases humanitarian items, under United Nations supervision, by means of disbursements from that account. This regime operates hand in hand with the positioning of United Nations personnel at border points for the purpose of monitoring trading activities between Iraq and its neighbours. The cost of the United Nations personnel is also covered by the escrow account.

This proposed new regime comprises elements of interference that undermine not only the sovereignty of Iraq but also that of its neighbouring countries, which must agree to open a United Nations account for the deposit of monies paid for imported Iraqi oil. They must also agree to the presence of United Nations inspectors on their territory for the purpose of monitoring trade between them and Iraq. In addition, this regime imposes a ceiling on the volume of oil which neighbouring States are entitled to import from Iraq (150,000 barrels per day). Moreover, it abolishes the earlier procedure approved by the United Nations under which Jordan was excluded from the comprehensive sanction measures imposed on Iraq and permitted to import oil against the export of Jordanian civilian goods.

3. The draft resolution proposes a system for compensating neighbouring States for losses incurred as a result of their application of the comprehensive sanctions imposed against Iraq under Security Council resolution 661 (1990), a procedure which is inconsistent with the spirit of international law, with the prevailing interpretation of Article 50 of the Charter of the United Nations and with Security Council resolution 699 (1990) relating to requests from States for assistance pursuant to Article 50 of the Charter. The general understanding is that the United Nations and its agencies, international financial institutions and States benefiting from the imposition of sanctions either compensate third States which are injured by losses incurred as a result of their compliance with the sanctions regime or exclude them from carrying out the embargo, as in the case of Jordan. It is also understood that States which are victims of sanctions against them and which suffer fundamental damage as a result of the imposition of sanctions should not be asked to compensate third States which suffer partial damage owing to the imposition of those sanctions.

4. The draft resolution proposes a formula for the inspection of civil aircraft in neighbouring States prior to their arrival in Iraq and that Iraq should bear the costs of such inspection. This formula contravenes Security Council resolution 670 (1990), specifically in

regard to passenger flights. Even the Legal Counsel of the United Nations does not support the view that the prior approval and inspection of passenger flights to Iraq are a requirement under resolution 670 (1990).

5. The proposed draft resolution abolishes the distribution plan submitted by the Government of Iraq, as well as the procedures established in the Memorandum of Understanding and most of those under Security Council resolution 986 (1995), including extension of the 180-day operation period for each phase of the oil-for-food programme (for which a period of 190 days is proposed). It also lends permanence to the programme and turns it into a substitute for lifting of the sanctions against Iraq.

6. The draft resolution places new restrictions on companies wishing to import oil from Iraq and seeks new criteria for the selection of such companies in accordance with which the Secretary-General will choose the companies nominated.

Conclusions

Regardless of the source, the Government of Iraq categorically rejects any formula for so-called "smart sanctions" and will maintain a firm position about which there is no illusion. We do not believe that any State or authority or sane person can expect another State to participate in a project which has the ultimate objective of ending its existence as a sovereign entity. The plan of the United States of America and the United Kingdom, the French ideas and proposals and any attendant concepts will entail a full expropriation of the fate of the Iraqi State and people in all fields – politics, economics, development, trade, industry, finance and society. Iraq's rejection of such plans and their ultimate objectives therefore rises to the level of a "struggle for national independence", whatever the sacrifices involved. The so-called "smart sanctions" are but a new facet of neo-colonialism. The Government of Iraq refuses to see its people transformed into a mere consumer society – a society that eats but does not think, that enjoys but does not produce – and for whom? For foreigners.

From the very beginning, the Security Council has dealt with the Iraqi people in an unfair manner with respect to food, medicine and some civilian humanitarian requirements. Under the unjust embargo regime and the oil-for-food programme, no allowance is made for the mind, for culture, for information, for the fabric of society, for industrial, agricultural and scientific advancement – for what is needed to run a State. The reason behind this deliberate denial is not difficult to comprehend. From the outset, the goal of imposing and perpetuating such a harsh and unjust embargo against Iraq was political. Simply put, the goal was to change the national political regime in Iraq. This goal is not the shared objective of the members of the international community as represented in the United Nations. It is the goal of the United States of America and the United Kingdom and those who follow them in their own interests and who are influenced by the oil colonial mindset. Those who shift the blame onto the national Government of Iraq must remember that this regime is the very same one that brought to Iraq the highest level of development ever, as acknowledged by the international organizations concerned. They must also recognize that what they refer to as "the faltering of the sanctions regime" represents in reality a concrete reflection of the lack of conviction among the absolute majority of the international community. What is being done to Iraq does not represent their shared objective. We are confident that the old imperialist and colonial schemes to contain the situation are bound

to fail. It is no secret that the issue as a whole had nothing to do with the implementation of Security Council resolutions. It is not that Iraq continues to be a threat to its neighbours or that the problem stems from the policies and practices of the Government of Iraq.

The powers and functions of the Security Council under the Charter are clear and are fully explained in jurisprudential and judicial references. International legality, as represented by Security Council resolutions on many issues, has become the subject of ludicrous comment in many of those references, which talk about the appropriation of international legitimacy by the United States of America and the privatization of the Security Council by the arrogance of power.

What is required now, therefore, is to rectify the dangerous situation affecting Iraq so that Iraq can indeed feel that the Security Council is dealing with it in a just, balanced and even-handed fashion instead of calling on it to carry out what those who have a hidden agenda against Iraq regard as its duties. The siege imposed against Iraq must be lifted and the grievances of Iraq must be addressed fairly. These elements represent the basic foundation for security, peace and stability in the region.